

1 aren't recurring in any way, are they?

2 MR. GOYAL: I assume they wouldn't be
3 recurring if the costs would reflect the manual
4 processing of orders that drop out of OSS.

5 ARBITRATOR ATTWOOD: We are just trying to
6 understand what you wrote here. It's not a
7 mystery, but we're trying to figure out what is it
8 that you would be charging when you referred to
9 this, whatever it is, JDPL. We are just trying to
10 get at what it is that you think you should assert
11 that you would charge for or are charging for.

12 MS. FOX: What's that section?

13 ARBITRATOR ATTWOOD: III-6. It's under
14 III-6.

15 MR. GOYAL: It's the Verizon rationale
16 column.

17 MS. FOX: What page are you on?

18 MR. GOYAL: It's page two of my printout.

19 MS. FARROBA: It's not the contract
20 language, but the rationale that you have. It's
21 towards the bottom on page two.

22 MR. GOYAL: Maybe just to focus the

1 answers, I don't want to take up too much time, but
2 what I'm trying to figure out here is, is there a
3 disagreement, and what's Verizon's position and
4 what's WorldCom's position.

5 ARBITRATOR ATTWOOD: WorldCom, do you
6 understand there to be a disagreement between you
7 on this point?

8 MR. GOLDFARB: I have not seen the JDPL
9 language, so I'm not sure if there is a
10 disagreement. Perhaps it would be useful for me to
11 look at it also.

12 ARBITRATOR ATTWOOD: Why don't we pick it
13 up at a break, and why don't you move on.

14 MR. GOYAL: Okay. The last question I had
15 on issue III-6 has to do with language in Verizon's
16 proposed--if I can find it.

17 Verizon proposes language under issue
18 III-6 that would allow it to conform to a change in
19 the law regarding UNE combinations by the filing of
20 a tariff, and I just want to explore the interplay
21 between that language and I will find it in a
22 minute. I think it's 4.7. No, I'm sorry, it's

1 1.41 in the UNE attachment, and I wanted to explore
2 the interplay between that language and Verizon's
3 position on change of law issues.

4 Does it reflect your position on change of
5 law issues. And I realize the panel you have up
6 now is talking about UNEs and not business process
7 or general terms and conditions.

8 But to the extent you guys can testify on
9 that--

10 MR. ANTONIOU: Would you like to know what
11 our rationale is for that clause?

12 MR. GOYAL: Yes.

13 MR. ANTONIOU: I will think of an example
14 we are all familiar with. The UNE Remand Order.
15 Out of that order in November of '99 came a set of
16 new UNEs, some of them I think 30 days, some
17 120-day items if I recall right.

18 And I for one among many at Verizon had
19 lots of discussions with various CLECs about some
20 of that language. Sometimes the language that we
21 made available by the date of the effectiveness for
22 the particular UNEs folks accepted and were happy

1 with. Sometimes they had some issues, sometimes
2 they had lots of issues. But the bottom line is
3 the goal of this language here is to have a
4 particular forum if anybody has a problem with some
5 new service that it is that we have to provide or
6 some new UNE in this case, and if folks have a
7 problem with it, then they come in as a group, a la
8 a collaborative, although it's in the context of
9 looking at a tariff, and the applicable commission
10 takes a look at all of the complaints that folks
11 might have, takes a look at our position, and makes
12 a judgment about what should be in the tariff. And
13 it's done fairly efficiently and quickly and we
14 frankly prefer that as opposed to having literally
15 hundreds of carriers come back and say well, we
16 don't like this, we don't like that, and then they
17 have very legitimate points. I don't mean to
18 denigrate the point, but the point is for those of
19 us trying to take into account all these various
20 points from a efficiency standpoint both for us and
21 for them, the other carriers, the CLECs want to get
22 the benefit of whatever it is that they are getting

1 new as quickly as possible. We would want them to
2 have that benefit because we don't want them to
3 have complaints. We don't want them to say we gave
4 you a full markup of this and you haven't responded
5 back to us. It's been 10 days. Where are you
6 folks? From their perspective, it's very important
7 that they get done. And we appreciate that.

8 From our perspective we've got 200 people
9 nipping at our heels--rightly from their
10 perspective--but how do we get it all done? We
11 prefer it be done in the tariffs. The powers that
12 be that have to make the decisions have all the
13 arguments in front of them and they get it done for
14 better or for worse, and that's the reason for the
15 language.

16 MS. FARROBA: Do you think that process is
17 quicker?

18 MR. ANTONIOU: It's quicker than dealing
19 with individual carriers. One person comes. Small
20 market. Somebody else comes in with all sorts of
21 changes. I lived it. It's not a pleasant process.

22 ARBITRATOR ATTWOOD: As opposed to like

1 this process.

2 MR. ANTONIOU: I like this process.

3 MR. GOYAL: Is there a reference to that
4 process elsewhere in Mr.--Verizon's proposed
5 language?

6 MR. ANTONIOU: I used the term
7 "collaborative" as sort of an analogy to the fact
8 that in looking at a tariff that we would submit,
9 folks are going to come in like, for example, the
10 UNE tariff that we have in New York they are going
11 to make their ex parte comments to staff there as
12 they have, and say, you know, we think Verizon is
13 okay, on this, on this one they're all wrong, and
14 here's why. We're going to come in, make our same
15 comments. We will have hearings. It will get
16 done. So that's at least a vehicle. We may in
17 some instance think it's discreet enough to do it
18 through a contract amendment. But if it's some new
19 set of UNes that are pretty involved, this may be
20 the more efficient way to do it.

21 MS. FARROBA: Is this a WorldCom or AT&T
22 issue?

1 MR. GOYAL: This is in language proposed
2 to WorldCom, although I think it's also reflected
3 in the language proposed by AT&T.

4 MS. FARROBA: Okay. Are you opposed to
5 doing it through the tariff process?

6 MR. LATHROP: I don't think we are
7 generally, but as a process issue, if this
8 Commission is standing in the stead of the Virginia
9 Commission, I suppose that Verizon's tariff
10 filings, which would ordinarily go to the Virginia
11 Commission and then be subject to opposals by a
12 variety of parties, might come here.

13 So, my point is just that the language
14 provided in Verizon's 1.4 does not provide a
15 sufficient process to reach a resolution. It does
16 include language mutually agreed by parties, but
17 it's not surprising that it's often the case that
18 Verizon's filings are not mutually agreed even in a
19 sort of collaborative workshop session. So we
20 might want clarity of process by which we would get
21 whatever tariff language is filed into the product
22 that was intended.

1 ARBITRATOR ATTWOOD: I'm not hearing
2 Verizon object to that little bit more clarity, are
3 you? You guys might want to talk about this
4 further, this issue off-line further. Because it
5 sounds like there is a fair amount of understanding
6 with a desire to move forward with a tariff
7 process, but some desire to flesh it out.

8 MS. KELLEY: If I could interject also, we
9 do have some tariff versus ICA issues that this
10 panel, are not witnesses for, and there are some
11 nuances that--so anything they say here I don't
12 want to be taken as sort of a more global statement
13 of our position on that issue.

14 MS. FARROBA: This would just be limited
15 to this particular issue.

16 MR. ANTONIOU: We certainly would like to
17 put our heads together and see if we could find
18 something that both parties can live with.

19 MR. GOYAL: Moving on. I have--I think I
20 only have one question for issue III-A, and that's
21 directed to AT&T. I just want to make sure I
22 understand.

1 With respect to III-A, it sounds like
2 AT&T's position on III-8 conforms really closely to
3 its position on issue of III-11. The underlying
4 dispute with Verizon is basically the same as the
5 dispute with issue III-11 which is access to
6 subloops and sub-UNEs and MTEs.

7 I guess I want to clarify. Is there any
8 substantive contract language or substantive
9 dispute here for you guys in III-8 that's not
10 already covered by III-11?

11 MR. PFAU: I don't believe so.

12 MR. GOYAL: There's all I got.

13 ARBITRATOR ATTWOOD: Okay. Trying to
14 decide if it's worth a 10-minute break now and--and
15 moving in--

16 MR. KEHOE: One housekeeping thing?

17 ARBITRATOR ATTWOOD: No, one second,
18 please.

19 Could I ask you guys what your preference
20 is? I guess we have about likely 45 minutes more
21 of questions is my guesstimate. Would you like us
22 to start and take some of the issues or--and then

1 move into a panel, the next panel, or do you want
2 to take a break quickly now?

3 MR. HARRINGTON: To the extent we could
4 address the record request issue before the break,
5 I would be very pleased by that, but if not, I will
6 wait.

7 ARBITRATOR ATTWOOD: We only had one
8 record request, and so I will tell you right now we
9 won't decide the global issue on record requests.
10 We'll decide that specific one later today, so you
11 won't miss out on any discussion.

12 MR. GARY: We also have just for the
13 record I understand John White from the advanced
14 services panel is the one to answer the integrated
15 digital loop carrier, and he is here, and whenever
16 you'd like him to join the panel, he will.

17 ARBITRATOR ATTWOOD: The question is, do
18 we want to take a five-minute break now? Yes. We
19 will take a five-minute break now and then we'll
20 come back.

21 (Brief recess.)

22 Whereupon,

1 JOHN WHITE

2 was called for examination by counsel for
3 Commission and, after having been duly sworn by the
4 notary public, was examined and testified as
5 follows:

6 ARBITRATOR ATTWOOD: Go ahead and say who
7 you are representing.

8 MR. WHITE: John White for Verizon.

9 ARBITRATOR ATTWOOD: In case there is
10 somebody here in the room for subpanel two, which
11 would be the third panel of the day, I don't think
12 that's going to happen today, so I think we are
13 lucky to get into a subpanel five, which should be
14 the second group. We are hoping to push through to
15 that, but in case people for their schedules I
16 don't think that's likely to happen today.

17 MR. THAGGART: I'm Henry Thaggart,
18 attorney advisor at the policy division, and just
19 to echo the comments of my colleagues earlier
20 today, and by way of full disclosure I'm going to
21 asking questions about areas in the record that I
22 view as not clear or not complete; and so to the

1 extent that I'm asking questions to one group more
2 than the other that is why, and you should view
3 this as your opportunity to expand, clarify, and
4 complete the record testimony.

5 I first want to start with issue III-7 C,
6 and in particular I would like to talk about the
7 termination liability clause. This is directed to
8 the Verizon panel.

9 Directing Verizon's attention to the
10 Verizon reply dated May 31st, it's at page 63 of
11 the Verizon reply. And by way of note, I don't
12 think this is one of the exhibits so I'm going to
13 refer to it as the Verizon reply. Page 63. I'm
14 sorry, page 83.

15 The testimony states that Verizon seeks to
16 be made whole. Is there someone here that can
17 discuss that issue?

18 MS. FOX: Yes, actually we did address
19 that in--we did answer that question in III-7, and
20 what we meant by that is if a customer purchases
21 special access and, say, signed up for a five-year
22 plan, disconnects after two years, then what would

1 be owed under termination liability would be
2 essentially be the difference in price between the
3 five year rates and the two year rates.

4 So, when we say make Verizon whole, we
5 expect to be paid the appropriate rates for the
6 time the service was in effect.

7 And that's pursuant to the terms of the
8 tariff.

9 I know there were multiple responses to
10 III-7, AT&T's III-7 discovery request, but we did
11 spell that answer out in the request.

12 MR. THAGGART: Actually, that wasn't my
13 question, but thank you.

14 I was wondering whether there was a rule
15 of thumb or calculus that you could share with the
16 Commission, share with the staff, that would inform
17 us on how to go about quantifying this issue of
18 being made whole.

19 MS. FOX: Well, since--what seems to me to
20 be fair is that the CLEC purchases service pursuant
21 to tariff, disconnects prematurely, then it owes us
22 something for the time the service has been in

1 effect, and in accordance with the termination
2 liability provisions and specific calculations
3 spelled out in the tariff.

4 MR. THAGGART: Right. I understand the
5 fairness issue, but I'm wondering whether there is
6 a particular formula you all employ in looking at
7 the determining termination liability.

8 MS. FOX: Termination liability is
9 governed by specific calculations included and
10 explained in the tariff.

11 And it depends on how long you've had the
12 service at the time you disconnected it. There are
13 two options. We calculate the value for both
14 options and assess the lesser of the two. And it
15 depends on the service that you purchased and the
16 term plan. There are minor differences in
17 calculations for DS1 versus DS3, for example.

18 MR. THAGGART: And so the fee is based on
19 the particular service, and it does not vary from
20 customer to customer?

21 MS. FOX: Well, the calculation depends.
22 Let's just take a--as I started to talk about it, a

1 five-year DS1 circuit that's disconnected after two
2 years. The CLEC actually or IXC or whoever
3 purchased that, satisfied a two-year term. So the
4 terms of the tariffs state that under one of the
5 options, what's fair and what would make us whole
6 is if you pay us as though you have taken a
7 two-year term plan because that's the time that you
8 actually satisfied.

9 And so the term liability would be the
10 difference in price between the five year rates for
11 DS1 and the two year rates for DS1.

12 Now, what that actually comes out to be I
13 can't tell you without sitting at my computer and
14 at a spreadsheet.

15 MR. THAGGART: Does this formula or this
16 calculus differ for any other sort of conversion or
17 termination policy at Verizon?

18 MS. FOX: Well, as I said, we need to know
19 what service we are talking about, what term plan
20 we are talking about, then we go look in the tariff
21 and study what the specific termination liability
22 provisions are for that service.

1 Now, I can give you the tariff references
2 or we could talk specifically--I had a page here
3 that summarizes what the termination liability is.
4 The real subject matter experts on term liability
5 are the special access product manager, and I have
6 to admit I'm not a special access product manager,
7 I'm an EEL and dedicated transport product manager,
8 but I do have familiarity with those provisions in
9 the tariff.

10 MR. THAGGART: And just so I understand,
11 does the termination liability policy differ for
12 conversion of service versus actual termination of
13 service?

14 MS. FOX: No.

15 MR. THAGGART: It's the same?

16 MS. FOX: Right, because to us that's
17 discontinuance of service prior to the committed
18 term plan.

19 MR. THAGGART: I would like to ask AT&T a
20 response--to respond. Specifically, what rules of
21 thumb or calculus does AT&T propose the Commission
22 consider? Specifically, AT&T refers to appropriate

1 termination penalties in its testimony. Are there
2 calculus or rules of thumbs that we should impose
3 or consider when determining what is appropriate?

4 MR. PFAU: I think there are three factors
5 that need to be considered. First, I think you
6 have to look at the opportunity to recover your
7 incurred costs. No businessperson would provide a
8 service to another party knowing they would lose
9 money as a result of the termination.

10 I think you also need to look at how other
11 customers are treated, and I think you also then
12 have to look at what would occur in a competitive
13 marketplace.

14 I think when you do that, you will see
15 that the situation we have here is relatively
16 unique. As a first consideration, your special
17 access tariffs were not constructed in an
18 environment where there is a competitive
19 marketplace or any kind of competitive discipline
20 placed on the construction of a tariff, and in many
21 cases there are purchases of special access simply
22 because parties couldn't get the equivalent UNEs.

1 For some reason it was easier to get special access
2 than it was to get the equivalent UNE and UNE
3 combination.

4 So, as a result, I think you have to look
5 at any existing termination liabilities with a
6 jaundiced eye.

7 ARBITRATOR ATTWOOD: Can I interrupt you
8 there. Are you in some way limited right now from
9 challenging those termination liabilities under the
10 tariff?

11 MR. PFAU: We would have to be able to
12 comply with the conversion restrictions in order to
13 have any meaningful volume to have a challenge on.
14 And at this point we've not been able to--

15 ARBITRATOR ATTWOOD: I don't understand
16 your answer. You couldn't on its face challenge
17 the tariff as an unreasonable termination
18 liability?

19 MR. PFAU: I will look to my legal team
20 over there on that one.

21 ARBITRATOR ATTWOOD: Wake up now.

22 MR. KEFFER: The answer to your question

1 is yes, you're only looking at the tariff within
2 the narrow confines of special access service.

3 ARBITRATOR ATTWOOD: I'm just exploring
4 the concept that these are tariffs that were
5 identified or developed in--that are in somehow in
6 effect contracts of adhesion or one-sided
7 contracts, and yet--and I think as I understand
8 your testimony, you're arguing that because of
9 that, the termination liabilities--we ought to
10 consider language that would not impose termination
11 liabilities because of the nature of the special
12 access tariff. What I'm trying to explore is, I
13 don't understand why the vehicle needs to be--why
14 you don't have a vehicle to challenge those as
15 tariff terms currently.

16 MR. KEFFER: The answer is, those terms
17 may be perfectly appropriate in instances where
18 carriers are buying special access. If AT&T is
19 buying special access from Verizon and agrees to a
20 term plan and does not live up to the obligations
21 under that term plan, then termination liability
22 provisions should apply. But that's not what we

1 are talking about here. We are talking about more
2 than that.

3 We are talking about a circumstance where
4 AT&T would have liked to have used UNEs, for
5 example, to provide a particular service, but
6 wasn't able to do so because Verizon wasn't making
7 it available, refusing to make them available in
8 the time frame we wanted, or dug in its heels and
9 refused to provide UNEs.

10 ARBITRATOR ATTWOOD: But is it violating
11 the law when it says that you have an option to
12 purchase it under a special access as a loop
13 transport combination at the outset? Is that your
14 position?

15 MR. KEFFER: I didn't follow your
16 question.

17 ARBITRATOR ATTWOOD: Well, you're saying
18 that there is a difference between when I have
19 purchased it for truly special access and when I'm
20 purchasing it to convert it for a UNE. I mean,
21 isn't that what you were suggesting?

22 MR. KEFFER: I'm still not following your

1 question.

2 ARBITRATOR ATTWOOD: I'm sorry, I'm not
3 being clear.

4 I understood your answer to be that they
5 may be perfectly acceptable, "they" meaning the
6 termination liability may be perfectly acceptable
7 in the context where I am purchasing special access
8 services, and therefore, not appropriately subject
9 to a facial challenge, for example, as an
10 unreasonable penalty as a matter of special access.
11 But I understood you to say, but here, because of
12 something Verizon has done, and I was exploring
13 what it was that they had done, but because of
14 something they've done, you've purchased it
15 through--you've purchased the loop transport
16 combination through special access with the intent
17 to convert.

18 MR. KEFFER: Or we purchased it and now we
19 have the ability to convert it because of the
20 changes in the Commission's rules and policies, and
21 in that circumstance, Verizon wants very much to
22 hold us to termination penalties to maximize their

1 revenues and preclude us from taking advantage of
2 UNE conversion availability.

3 ARBITRATOR ATTWOOD: Well, I guess what
4 I'm trying to explore, and I understand your
5 answer, but I mean, we are kind of dancing around
6 the question why you wouldn't, as an initial
7 matter, order them through as a UNE. The loop
8 transport combination, why wouldn't you order that
9 right now as a UNE?

10 MR. KEFFER: Well, I think now where that
11 service is available to us, we should be ordering
12 it that way. Up until now, and we don't have a
13 witness on this, but there have been instances
14 where we have expressed an interest in ordering a
15 loop transport combination as a UNE, and been given
16 various reasons why that's not available, but if we
17 are willing to order it at the higher price special
18 access rates, suddenly, lo and behold, it's become
19 available.

20 So sometimes you order special transport
21 just as a matter of business expediency, so you
22 don't have to debate whether the UNE arrangement is

1 available.

2 ARBITRATOR ATTWOOD: So, but if you're
3 ordering it a business ex--let's use that as an
4 example. If you're ordering it because you have
5 chosen to order it because your business plan is
6 such that you want to order it, I'm going to direct
7 it back to your witness unless you think this is
8 just a legal question, but you're ordering it, and
9 you're telling me that you think if you order it as
10 a special access circuit, it can be, in fact,
11 perfectly appropriate to have certain penalties,
12 why isn't--I mean, isn't Verizon then in a position
13 where it's priced its special access for which
14 you're now paying for that service based on an
15 understanding that it would have this for a--let's
16 use your five year example, a five-year commitment
17 at that price? That's what you're paying for when
18 you initially buy it.

19 Or, alternatively, are you saying it's
20 really that five year price--that termination is
21 too high and not reasonable to begin with? That
22 was what I was trying to explore, based on your

1 testimony, that was suggesting that these tariffs
2 were really not priced correctly.

3 MR. PFAU: Well, certainly I would say
4 they're not priced correctly, but I think you had a
5 lot of questions in there.

6 ARBITRATOR ATTWOOD: I know I did.

7 MR. PFAU: I will see whether I can hit at
8 least a majority of them.

9 I think the one of the problems you have
10 with the current special access tariffs is that we
11 have been ordering loops and loop transport
12 configurations to connect to our networks because
13 it's been expedient to serve customers, and while
14 we may not want to pay as much as we do for special
15 access to serve a customer, at least by getting the
16 special access under the term plan, we can serve
17 some customers and a little revenue, assuming
18 you're making some money on it, is better than no
19 revenue.

20 Obviously, if we could have bought them
21 outright as UNEs, that would have been better. To
22 buy them at month to month special access rates

1 would have been a lot worse.

2 So, I think the point we are making is
3 that special access is recognized to be priced well
4 above its economic costs. I mean, orders of
5 magnitude two times.

6 Therefore, to then come back and say well,
7 because you had no alternative in the past and but
8 do now, you have to pay me an extortionate rate to
9 get out of this prior contract doesn't seem to be
10 an appropriate treatment of the situation.

11 ARBITRATOR ATTWOOD: But again, this is
12 where I come back to, if they are unreasonably high
13 costs, aren't you protected by process at this
14 Commission to challenge this as unreasonable under
15 201 theory?

16 MR. ANTONIOU: Could we have an
17 opportunity to speak?

18 ARBITRATOR ATTWOOD: Yes, of course.

19 MR. PFAU: I don't think I finished with
20 his question.

21 ARBITRATOR ATTWOOD: Go ahead, Chris. And
22 then we'll come back.

1 MR. ANTONIOU: I heard words back in Ohio
2 where I come from; they're called fighting words.
3 Extortion, this hyperbolic commentary from
4 Mr. Keffer, about how we kept them away and not
5 given them and sort of held back and dug in our
6 heels. Hey, if we don't have to build them, you
7 don't get a superior network. That means you
8 didn't have a right to them. We didn't dig in our
9 heels. You didn't have a right to them. We didn't
10 have an obligation. So that's why you took special
11 access, so let's settle down with the rhetoric.
12 You didn't get them because we had no obligation.
13 You took what you wanted to do your business.

14 Now you got a right to convert them. Pay
15 up. If you don't like it, go to the Commission,
16 file a complaint about the termination liability.
17 This is sort ridiculous commentary.

18 ARBITRATOR ATTWOOD: We don't have to
19 escalate the rhetoric. I was just trying to get at
20 the legal obligation. That's what I'm really
21 trying to get at, and I understand.

22 MR. PFAU: Should I go back to answering

1 your questions on the criteria that should be
2 looked at because I think this all gets into some
3 of the same stuff.

4 MR. THAGGART: Are you finished with your
5 line of question, Dorothy?

6 ARBITRATOR ATTWOOD: See, he's a good
7 staff attorney.

8 I would actually like some response to the
9 problem that I'm have understanding AT&T's position
10 here, putting aside the questions of whether the
11 rates are high or the state of the special access
12 market. I'm asking really as a legal matter. You
13 are asking that we include language in an
14 interconnection agreement because you feel that you
15 need that protection in light of the way in which
16 you have elected to convert on special access.

17 My question is, to some degree, is the
18 protection you're seeking already existent under
19 the state of the law that protects against certain
20 rates and charges that are unreasonable under a
21 challenge to a tariff? And therefore, is this
22 language necessary to protect the rights that you

1 have identified, putting the rhetoric in
2 wherever--we will deal with each side's concerns
3 about special access, but I'm asking really more of
4 what does this language add for you that is not
5 existent under the mechanisms of a tariff review or
6 challenge to a tariff.

7 MR. PFAU: Are you asking for a legal
8 opinion? Because that sounded like a lot of law.
9 I can only talk from the standpoint of trying
10 to--getting in the market and trying not to end up
11 losing your shirt in the process. So, Mark, if you
12 could render some opinion on the--

13 MR. KEFFER: And I've tried. If your
14 question is, could we mount a legal challenge to
15 argue that now that the rules of provisioning have
16 changed and loop and transport combinations are
17 available as EELs, that we could mount some sort of
18 complaint against Verizon's special access tariffs
19 to challenge termination liability provisions, the
20 short answer is I've never thought of that, and if
21 that's what you're suggesting, maybe we will take
22 that back and think about it.

1 I think the problem we are trying to deal
2 with here, though, is the circumstance that
3 Mr. Pfau and I are both trying to convey, is that
4 in the past, the only thing available to us has
5 been special access arrangements. Now that that's
6 changed, and there should not be a punishment
7 attached to the use of EEL arrangements, there
8 should not be a financial penalty that attaches to
9 that.

10 And our approach here is to try to deal
11 with that through the Interconnection Agreement but
12 if what you're suggesting is that the Commission
13 would want to deal with that more broadly in the
14 tariff review context; I've not given that any
15 thought before you raised the question, and I would
16 have to go back and think that through.

17 MR. GARY: The issue really is not all
18 that difficult. I think you're onto the answer.
19 Verizon provided the service under its tariff and
20 it properly provided the service. There was no
21 complaint back then that the service was improperly
22 provisioned. And now it has a termination

1 liability in the tariff and that's what Verizon
2 Virginia will comply with, and we believe the
3 Commission previously healed that termination
4 liabilities are applicable to the conversion to
5 UNES.

6 So, this is really a pretty simple
7 question, quite frankly, and the fact that AT&T
8 doesn't want to pay the termination liability isn't
9 determinative; the fact that Verizon has the legal
10 authority and the right to charge that termination
11 liability under its tariffs as approved by this
12 Commission.

13 MR. KEFFER: And I guess you've heard the
14 answer to the complaint that you suggested, so.

15 Part of the problem I had in addressing
16 your question is it sort of assumes that everything
17 starts from the same moment in time, and from my
18 perspective, special access has been around a long
19 time. It's been overpriced for a long time.
20 Mr. Gary says, we haven't complained about the
21 rates. I don't think that's quite true. I think
22 AT&T has complained about special access pricing

1 pretty much every step of the pricing process.

2 The issue that we are dealing with here
3 arises as a result of the availability of EELs, and
4 how can you take those high-priced special access
5 arrangements that you sort of had no option but to
6 buy in the past and get those converted to EELs
7 without incurring financial punishment for doing
8 so?

9 ARBITRATOR ATTWOOD: So, I guess then your
10 testimony goes only to the currently existing
11 termination liabilities?

12 MR. KEFFER: If special access and EELs
13 are equally available to us from now going forward,
14 and we mess up and buy the wrong one to meet our
15 needs, and we buy special access and there are
16 termination liabilities that apply, then I will say
17 we will be responsible for them, and we would pay
18 them.

19 If we terminated that special access
20 arrangement.

21 ARBITRATOR ATTWOOD: Okay. So, the
22 language you propose is intended to not govern the

1 purchase of special access January 2002, but it's
2 to govern the purchase of special access that has
3 been already. Is that my understanding?

4 MR. GARY: I don't think we have seen that
5 distinction.

6 ARBITRATOR ATTWOOD: I didn't read the
7 testimony, but I'm hearing you say that. Am I
8 wrong?

9 MR. PFAU: Talking at this from a
10 layperson's standpoint, the issue seems to be just
11 on paragraph 11.13.6, and that is only one
12 sentence, and it seems to be fairly well focused.
13 And it says in the event that the termination of
14 any service that is converted to unbundled network
15 elements would otherwise affect AT&T's ability to
16 satisfy any term or volume requirements applicable
17 to existing services pursuant to contract or a
18 Verizon tariff, AT&T shall not be liable for any
19 termination liabilities or other requirements under
20 such contract or tariff.

21 This is very clearly saying we bought it
22 as a special access, we want to make it a UNE

1 combination, we don't want to be penalized for
2 making that change.

3 Obviously, if the UNE is available and
4 it's priced lower, we would be pretty silly to be
5 buying it new in that special access arrangement.
6 If the special access arrangement were a price
7 lower, we probably wouldn't buy it as a UNE. So I
8 don't see in the future if truly UNEs or UNE
9 combinations are available on a practical matter
10 that we would buy it in the wrong plan.

11 MS. PREISS: Could I explore a question
12 about the quantification of the termination
13 liability? I understand, I think, AT&T's argument
14 to be sort of a fresh look type argument because of
15 the availability of certain combinations that
16 weren't available before.

17 Leaving that aside for a minute, and I
18 think, Ms. Fox, this is addressed to you, I'm going
19 to stumble a bit, but bear with me.

20 Termination liability, as I understand it,
21 is calculated by Verizon to take into account that
22 you provisioned certain plant and you have assumed

1 that over a five-year term in your example that you
2 will recover your costs plus some return on those
3 costs through a certain monthly recurring charge
4 that you will receive for 60 months. AT&T then
5 under the--leaving aside the UNE combinations to
6 date, if they terminated after two years, you would
7 not have recovered some of those costs because you
8 had spread them over 60 months when you calculated
9 that, and you would have a termination liability
10 that would allow to you cover the costs that you
11 didn't--would have otherwise recovered over five
12 years. Is that sort of accurate?

13 MS. FOX: In theory that sounds accurate.

14 MS. PREISS: But it seems to me that one
15 thing I need to understand is AT&T I think AT&T is
16 arguing that when, instead of discontinuing service
17 altogether, instead they're converting to a UNE
18 combination, Verizon's revenue stream isn't cut off
19 altogether. You're continuing to receive revenue
20 associated with that in-plant investment, just at a
21 lower rate, the UNE rate as opposed to the special
22 access rate.

1 So, in that case, if the termination
2 liability was calculated to recover the cost as if
3 you were receiving no revenue going forward for the
4 rest of that five-year term, then is it possible or
5 is it consistent that the amount of the termination
6 liability is not appropriate taking into account
7 that Verizon is, in fact, continuing to receive
8 some revenue?

9 MS. FOX: Well, it depends on the--there
10 are two options that are calculated when a customer
11 discontinues service, and that's exactly what
12 happens when a carrier requests to convert a
13 service from special access to UNE; that's
14 discontinuance of service in accordance with the
15 terms of the tariff.

16 MS. PREISS: They're no longer purchasing
17 out of the tariff?

18 MS. FOX: That's right.

19 And under option two, I believe, what the
20 carrier would be billed would be the difference in
21 price between the five year rates and the two year
22 rates from the time the plan had been in effect.

1 So that means that if--I will just stick to the
2 same example I have been using. If the carrier had
3 satisfied two years of the five years of the
4 five-year term, then the term liability would be
5 the difference in price, so that at the end it
6 would be as though the carrier had paid the
7 two-year prices for two-year term plan, so there is
8 nothing--nothing about the years three, four, and
9 five that come into play here.

10 MS. PREISS: But in my example, you're
11 continuing to receive revenue for years three,
12 four, and five. Just at a different level.

13 MS. FOX: At a greatly reduced UNE rate.

14 MS. PREISS: But a rate that is higher
15 than zero.

16 MS. FOX: Right, but how does that have
17 anything to do with being compensated appropriately
18 for the short period of time that the service had
19 been in effect? There are no term liabilities
20 associated with discontinuing a UNE, the way they
21 are with special access.

22 MR. PFAU: Could I point something out

1 that I think could be missed. You talk about when
2 you convert to UNEs, when you're looking at special
3 access, that was assuming some economies that were
4 amortized over a five-year period. UNEs assume no
5 commitment. They are reflecting what you would pay
6 on an economic basis for using it month to month to
7 month:

8 So, when I buy that UNE or convert to that
9 UNE, I'm theoretically paying a higher cost than
10 what I would have had for a contractual obligation
11 for multiple years. So there is no issue going
12 forward of not recovering costs. The issue is the
13 profit level isn't high enough to satisfy them.

14 MR. THAGGART: Verizon, would you respond,
15 please.

16 MR. GANSERT: This isn't a cost panel or
17 economics panel. I think you should take it up
18 then, but I tell you right now, I'm an engineer, I
19 also have an MBA, that's close to nonsense, that
20 statement that there is nothing in the UNE
21 calculation that makes an assumption that service
22 is being disconnected every month. It's based upon

1 assuming that the facility is used over the normal
2 life that we use it in our network, so there is
3 just nothing to do with term within the cost of
4 UNEs.

5 MR. PFAU: The life of the network, you
6 make no assumption that's in continuous use for a
7 particular customer.

8 MR. GANSERT: That's correct.

9 ARBITRATOR ATTWOOD: I think we understand
10 everyone's position. We will move on.

11 MR. THAGGART: Just so that the record is
12 clear and the witness out of fairness gets an
13 opportunity to answer the question asked, I will
14 restate it. Then you can answer it.

15 Directing your attention to AT&T Exhibit 2
16 in which you testified that AT&T is willing to pay
17 appropriate termination fees, what factors do you
18 consider when you discuss appropriate termination
19 fees?

20 MR. PFAU: I think I started out before we
21 made this half our digression, that it would be
22 based on cost recovery, that the appropriate costs

1 should be recovered, which means if we were paying
2 something less than the economic costs, there
3 probably should be some sort of a termination
4 liability, or there was not an opportunity to
5 recover a cost legitimately incurred. When the
6 service was established, there may be an
7 appropriate termination liability.

8 I think I said that you have to look at
9 how other customers are being treated, and I think
10 some of the discovery requests get to that, showing
11 that termination liabilities are adjusted for other
12 parties whether they're--in cases where there are
13 rate increases, they'll adjust it, if there are
14 cases of rate decreases, they adjust it, if the
15 network is optimized, they'll adjust it.

16 So, those factors have to be considered
17 when there is a denial of an adjustment of a
18 termination liability to a CLEC.

19 And then, finally, I think you have to
20 look at what would happen in a competitive market.
21 In a competitive market, I think even Verizon's
22 contracts address that. Say, if there is a

1 alternative bid in the marketplace, that Verizon
2 has the choice to either meet the bid or let you
3 out of the contract. It's my understanding that
4 the UNE prices are intended to emulate what would
5 be in a competitive marketplace.

6 What we are saying is either meet the
7 price or let us out of the contract.

8 MS. FOX: Well, again, this isn't a UNE
9 cost proceeding, but I think some of the comments
10 are subjective, and I don't think it would be easy
11 to determine, or is an easy thing to determine what
12 the appropriate cost standard should be. And to
13 say that we are applying term liability differently
14 is not true because what he cited are actually
15 spelled out in the tariff, so to say we are
16 applying termination liability for different
17 customers in different ways is not a true
18 statement. We are applying termination liability,
19 according to the terms spelled out in the tariff
20 the same way for everyone who buys service out of
21 the tariff.

22 MS. PREISS: Could I ask a tariff

1 follow-up question? Then I will be quiet. I'm
2 sorry, I'm interrupting.

3 Are we only talking about special access
4 purchase out of the federal tariffs here?

5 MS. FOX: For the most part, that's my
6 understanding that that's what we are focused on.

7 MS. PREISS: Is that AT&T's issue?
8 Because there is no Verizon, at least so far as I
9 know, and I think I should know, has not any
10 ability or has not yet exercised its ability to
11 engage in any contracts or contract tariffs and
12 special access; right?

13 MS. FOX: That's right.

14 MS. PREISS: It can't negotiate--well,
15 they have some pricing flexibility, and they
16 haven't exercised it, but they don't do contracts
17 for special access. I'm just referring to
18 Mr. Pfau's testimony.

19 MR. KEFFER: You asked a question about
20 intrastate special access volumes, and I think
21 they're very, very small. The vast bulk of special
22 access purchases are from the interstate tariff.

1 MR. PFAU: That's my understanding, too.

2 MS. PREISS: Better rates.

3 MS. FOX: That's exactly right.

4 MR. THAGGART: Question directed to the
5 AT&T panel also from AT&T Exhibit 2. In your
6 testimony, you describe a proposed transitional
7 mechanism to address Verizon's lower total revenues
8 as a result of conversion to UNE combinations. Are
9 you familiar with that proposal?

10 MR. PFAU: Can you point me to that?

11 MR. THAGGART: Let me see if I can find
12 it. Under the pressure of being asked, I cannot
13 find it. But I will come back to it.

14 Just so the record's clear, you are not
15 familiar with the proposal, the transitional
16 mechanism proposal?

17 MR. PFAU: It's just not ringing a bell.
18 I may think of it in other terms.

19 MR. THAGGART: I would like to go to issue
20 III-7 A.

21 Earlier today, Mr. Goyal was asking the
22 Verizon panel about instances where service would

1 be disconnected or altered in connection with
2 converting from a special access service to a UNE
3 service, UNE combination.

4 Do you recall that testimony?

5 MS. GILLIGAN: Yes.

6 MR. THAGGART: Just so that the record is
7 clear, could you, starting with disconnections,
8 give specific examples of where the service would
9 have to be disconnected when converting from
10 special access to UNE combinations.

11 MS. FOX: Well, I've testified earlier
12 that there wouldn't be any disconnection in that
13 case. Nothing that I can think of, nor any example
14 that anyone has been able to give me.

15 MS. GILLIGAN: The examples worked for UNE
16 platform.

17 MR. THAGGART: Moving to instances where
18 services would have to be altered, after the
19 service has been converted to a UNE combination,
20 can you give examples of when the service would
21 have to be altered without WorldCom's or AT&T's
22 permission?

1 MS. FOX: Specifically with special access
2 to EEL conversion?

3 MR. THAGGART: Yes--no. After the service
4 has been converted to UNE combination.

5 MS. FOX: When it would have to be
6 altered? Is there an example of--no, I don't think
7 of any.

8 MR. GANSERT: I think--

9 MR. THAGGART: Let the first witness
10 answer.

11 You cannot?

12 MS. FOX: As far as I know, once you
13 completed conversion of special access to EEL, what
14 reason would there be to alter that circuit for a
15 reason related to the conversion itself? I can't
16 think of any reason for that.

17 MR. THAGGART: Next witness.

18 MR. GANSERT: The only comment that I was
19 going to make is that in the general administration
20 and design management of the network, there were
21 times when facilities need to be replaced or
22 removed or changed, and so there could be times

1 once a conversion had been made that alterations
2 would be made.

3 Typically that's with the cooperation of
4 the customer. You wouldn't do it without informing
5 the customer.

6 MR. THAGGART: Could the proposed contract
7 language anticipate or specify that there are
8 instances where alterations may take place but at
9 the permission of the customer?

10 MS. FOX: But that's a different issue
11 than the conversion itself, right? So, is it
12 important to say that throughout the life of a
13 circuit that a customer purchases from Verizon that
14 it could never be disconnected, period? Or are we
15 really talking about when we convert special access
16 to EEL, there is no need to do a disconnect. Is it
17 related to that?

18 MR. THAGGART: Ma'am, I wasn't asking
19 about the hypothetical, however. There is specific
20 testimony that AT&T or WorldCom wants language in
21 the agreement that states that there would be no
22 alteration or separation or disconnection without

1 their permission, and so my question was whether
2 the Interconnection Agreement language could
3 properly reflect that, or is there a reason that it
4 could not.

5 MR. GANSERT: I think that language is too
6 restrictive.

7 As I said, I think as a general policy, I
8 think we have language already in most of the
9 agreements, as I understand it, where we do talk
10 about the need that there may be needs to do
11 modifications in the network, and we will cooperate
12 in every way to avoid disruption of service, and
13 that's even true with our regular customers. So,
14 it's just a question of degree that there are times
15 when things have to be altered, and you can't get
16 people's permission to do that, and our service
17 requirements supersede the--getting the convenience
18 of the customers.

19 MR. ANTONIOU: One example of that would
20 be if one went from having copper in the loop and
21 upgraded the loop planted to fiber, there would be
22 a change in that particular circuit in that case.

1 MR. PFAU: But are you doing that when
2 you're converting the circuit?

3 MR. ANTONIOU: No. We are not talking
4 about the conversion process. We are trying to
5 answer the specific question about during the life
6 of the circuit two or three or four years down the
7 line, whatever the period is. We might be very
8 well take a particular area that has copper plant
9 and convert that to fiber to upgrade the network.

10 MR. PFAU: That may be true, but that's
11 not at issue in the language we proposed.

12 MS. FOX: But that's the question asked.

13 MS. GILLIGAN: The specific examples that
14 we did cite were related to UNE platform and not
15 special access, and I guess our issue with that
16 language is that it was very restrictive because it
17 implied that we would never do it. And there are
18 some isolated instances where it could happen.

19 MR. THAGGART: Thank you. I will move on.

20 I would like to direct the panel's
21 attention to at that time AT&T Exhibit 2 once
22 again. This time I'm looking at page 19 of AT&T

1 Exhibit 2, beginning with line six, and I will read
2 it. It's AT&T's testimony, and AT&T testifies that
3 obviously the OSS UNE just as a loop or dedicated
4 transport UNE is part of a single combination that
5 currently operates in an integrated manner to
6 provide access services today. The language
7 reflected in AT&T's Section 111352 is simply an
8 explicit acknowledgement of the Commission's
9 requirements set forth in Section 51.315 B of the
10 Commission's rules.

11 Versus may not disconnect OSS UNEs
12 employed to support wholesale access UNEs employed
13 to support EELs if such a connection degrades the
14 operational support delivered for the combination
15 such as EELs.

16 And the reference to AT&T's Section 111352
17 is found in AT&T Exhibit 1 B.

18 Verizon, I'm going to ask you a question
19 about AT&T's proposed language in AT&T Exhibit 1 B,
20 specifically 111352. Are you prepared to answer a
21 question about Section 111352?

22 MR. ANTONIOU: We will do our best.

1 MR. THAGGART: What objection, if any, do
2 you have to AT&T's proposed language in that
3 section?

4 MS. FOX: In general, the objection is
5 that that language would require us to provide that
6 UNE prices, everything we provide for special
7 access although at UNE rates. So that was the
8 objection to that sentence.

9 MR. THAGGART: Perhaps I misread this.

10 MS. FOX: Because to me that says you are
11 going to do--what this says to me is you are going
12 to do maintenance and repair for the converted
13 service equal to what you converted from. So, if
14 you're converting from special access to an EEL,
15 that everything do you for an EEL is equal to what
16 you do for special access. And that's what I
17 object to.

18 MR. THAGGART: Perhaps I should ask as a
19 point of clarification to AT&T, does Section 111352
20 at all deal with OSS?

21 MR. PFAU: Yes, that would be the dealing
22 with the OSS, saying that if you are supporting a

1 service prior to conversion in a particular manner,
2 it has to be continued to be supported in the same
3 manner afterwards.

4 MR. THAGGART: In light of that
5 clarification, would you respond.

6 MS. FOX: I'm not sure I agree with that
7 conclusion.

8 MR. THAGGART: Please explain to me why so
9 that I understand.

10 MS. FOX: What maintenance and repair
11 standards should apply to an EEL? Theoretically,
12 it's the equivalent retail service; what AT&T would
13 have us do is apply special access maintenance and
14 repair.

15 In fact, there is probably very little
16 difference in what we would do for a DS1 or DS3 EEL
17 compared to special access.

18 However, I don't understand this tenuous
19 conclusion that AT&T has made somehow that related
20 to OSS, that now once it's converted, somehow it
21 has to be the same with special access. I just
22 really don't agree that that's the case.